

## UTAM, Inc.

P.O. Box 8126, Bridgewater, New Jersey 08807

April 27, 2011

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW,  
Room TW-A325  
Washington, DC 20554

Re: Ex Parte Submission by UTAM, Inc., ET Docket No. 10-97, RM-11485

Dear Ms. Dortch:

UTAM, Inc. (“UTAM”) herewith submits the following *ex parte* regarding the proposal in ET Docket No. 10-97, among other changes, to modify Section 15.307 of the FCC’s Rules.<sup>1</sup> As the Commission is aware, UTAM was designated the frequency coordinator for the unlicensed Personal Communications Service (“PCS”).<sup>2</sup> That band originally spanned from 1910-1930 MHz, although half of that spectrum—1910-1920 MHz—has been reallocated from unlicensed PCS to licensed Commercial Mobile Radio Services (“CMRS”). One of UTAM’s responsibilities was to manage the relocation of incumbent microwave users from the 1910-1930 MHz band. In such respects, UTAM was a tremendous success, with a large variety of competing equipment vendors funding a multi-million dollar effort to transition incumbent users from the band. While individualized new licensee/incumbent negotiations are quite common in new allocations,

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<sup>1</sup> *Amendment of Part 15 of the Commission’s Rules Regarding Unlicensed Personal Communications Service Devices in the 1920-1930 MHz band*, ET Docket No. 10-97, RM-11485 (May 6, 2010) (“*Part 15 NPRM*”)

<sup>2</sup> *See Amendment of the Commission’s Rules to Establish New Personal Communications Services*, General Docket No. 90-314, 10 FCC Rcd 7955 (1995); *see also* Part 15, Subpart D of the Commission’s Rules, 47 C.F.R. § 15.301 *et seq.*

UTAM was the first time that a collective, non-licensee entity was successfully able to manage a substantial relocation effort.

As previously noted, UTAM was responsible for relocating incumbent microwave users from the entire 1910-1930 MHz band, even though half of that band has now been reallocated to CMRS. Under the FCC's rules, UTAM also incurred substantial liabilities to third parties under the FCC's microwave cost-sharing rules where UTAM was the beneficiary of microwave relocation undertaken by carriers licensed outside of UTAM's band. UTAM's total costs for clearing the 1910-1920 MHz band were almost \$51 million, and of that amount, \$12.7 million is in the form of outstanding liabilities to third parties under the microwave cost sharing rules. Importantly, when the FCC made the determination to reallocate 5 MHz at 1910-1915 MHz to Sprint-Nextel, that reallocation was premised on the repayment, by Sprint-Nextel, of a *pro rata* amount of UTAM's clearing costs for the band--\$12.7 million.<sup>3</sup> Similarly, when the FCC reallocated 5 MHz at 1915-1920 MHz to AWS-3, the FCC determined that auction winners of that spectrum should also reimburse UTAM, in aggregate, \$12.7 million.<sup>4</sup> Thus, at the present time, UTAM's anticipated revenues match offset its existing liabilities. Yet, until those liabilities are paid, UTAM cannot cease to function.

Because UTAM must remain in operation, UTAM's sole source of operating revenue—membership fees—cannot be eliminated by the FCC. While UTAM is open to suggestions as to how it could terminate its operations earlier, UTAM has been unable to find any route that would allow it to terminate at the present time. UTAM has investigated, among other things, transferring the expectation of auction revenue directly to its creditors and selling the expectation of auction revenue to an investor. To date, UTAM has been unable to find a solution that is legally and financially viable.

To the extent that UTAM must therefore remain in operation, elimination of the requirement that device manufacturers become UTAM members would work an inequity

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<sup>3</sup> See *In the Matter of Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service; Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, WT Docket 02-55, FCC 04-168, ¶ 347 (2004).

<sup>4</sup> See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order* 19 FCC Rcd 20720 (2004).

upon existing UTAM members. Although UTAM has largely gone into “maintenance mode” to reduce its expenditures to the absolute minimum, UTAM will continue to have ongoing administrative costs until shutdown, and will also have additional expenses to effect an orderly shutdown. Moreover, until such time as the auction revenues are actually received by UTAM, the expectation of such revenues is largely theoretical. UTAM—as it empirically determined—cannot sell the expectation of future revenues because of regulatory uncertainties involved in the actual allocation, timing and revenue realization for the auction.

The impact of eliminating Section 15.307’s requirement that manufacturers of 1920-1930 MHz devices become UTAM members would inequitably force the costs of maintaining UTAM—and any future risk in the auction itself—exclusively onto the shoulders of those existing UTAM members. Because the purpose of UTAM was to equitably distribute the costs of microwave relocation across the manufacturers that use the band, this action would undermine the original purpose of Section 15.307.

For these reasons, UTAM urges the FCC to maintain the requirement of Section 15.307 that manufacturers of devices for the 1920-1930 MHz band be members of UTAM. If the FCC desires to remove the burden of participating in UTAM from the manufacturing industry, UTAM instead encourages the FCC to expedite the auction of the AWS-3 band.

Respectfully submitted

By: /s/  
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cc: Julius Knapp, Chief, OET  
Geraldine Matisse, Chief, Policy & Rules Division, OET  
Jamison Prime, Chief, Spectrum Policy Branch, OET  
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